

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KENNETH PHELON, et al.,

Case No: C 09-3393 SBA

Plaintiffs,

VS.

JEREMY HAMMAN, et al.,

Defendants.

**ORDER DENYING APPLICATION
TO PROCEED IN FORMA
PAUPERIS ON APPEAL**

On July 23, 2009, Plaintiff Kenneth Phelon filed a *pro se* complaint against various Oakland police officers and other individuals and entities pursuant to 42 U.S.C. § 1983, claiming that his civil rights were violated in connection with an ongoing state court criminal misdemeanor proceeding. Plaintiff later filed a First Amended Complaint adding Jolicia Kelley as a plaintiff. On January 18, 2011, the Court granted Defendants' unopposed motions to dismiss Plaintiffs' First Amended Complaint. Dkt. 69. On February 11, 2011, Plaintiff filed a notice of appeal of the Court's January 18, 2011 Order. Presently before the Court is Plaintiff Phelon's application to proceed in forma pauperis on appeal. Dkt. 73.

The in forma pauperis statute, 28 U.S.C. § 1915, permits the commencement of a civil action “without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor.” 28 U.S.C. § 1915(a). Under 28 U.S.C. § 1915(e)(2), federal courts are authorized to review claims filed in forma pauperis prior to service and to dismiss the case at any time if the court determines, *inter alia*, that the allegation of poverty is untrue. The benefit of proceeding in forma pauperis is a privilege, not a right. Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984). Thus, to obtain this privilege, the litigant must demonstrate, to the Court’s satisfaction, his or her

1 inability pay the requisite fees and costs. See Williams v. Marshall, 795 F. Supp. 978, 979
2 (N.D. Cal. 1992).

3 In the present matter, Plaintiff states in his application that he has no monthly expenses,
4 including no monthly expenses for rent, utilities, food, or clothing. Dkt. 73. The Court is
5 concerned that Plaintiff has not accurately stated his monthly expenses. As a result, Plaintiff
6 has failed to provide the information necessary to assess his application to proceed in forma
7 pauperis. Accordingly,

8 IT IS HEREBY ORDERED THAT Plaintiff's application to proceed in forma pauperis
9 on appeal is DENIED without prejudice to Plaintiff re-filing his application – within ten (10)
10 days of the date this Order is filed – to address the deficiencies identified herein. This Order
11 terminates Docket 73.

12 IT IS SO ORDERED.

13 Dated: 3/1/11


14 SAUNDRA BROWN ARMSTRONG
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 KEN PHELON,
5 Plaintiff,

6 v.
7 JEREMY D. HAMMAN et al,
8 Defendant.

9
10 Case Number: CV09-03393 SBA

11 **CERTIFICATE OF SERVICE**

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on March 1, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Jolicia Kelley
19 2932 55th Avenue
20 Oakland, CA 94605

21 Kenneth D. Phelon
22 2932 - 55th Avenue
23 Oakland, CA 94605

24 Dated: March 1, 2011

25 Richard W. Wiekking, Clerk

26 By: LISA R CLARK, Deputy Clerk